

REMARKS

Claims 21-39 remain pending in this application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

Claims 21-24 stand rejected under 35 U.S.C. § 102(b) as anticipated by Barker et al. (U.S. Patent No. 4,671,445).

Claim 21 recites an actuator system for a full thickness resection device including “a first cable extending from the actuator through the flexible sheath to the first tissue stapling member so that, *when the actuator is operated to draw the first cable proximally from the sheath, the first tissue stapling member is moved in a first direction relative to the second tissue stapling member*” and “a second cable extending from the first tissue stapling member to the control handle so that, *when the second cable is drawn proximally from the sheath, the first tissue stapling member is moved relative to the second tissue stapling member in a second direction opposite to the first direction.*”

In contrast, Barker et al. discloses only a single cable that extends from the actuator assembly to the anvil assembly. Barker et al. specifically describe a “cable that extends through and from the front spacer,” which is a portion of the actuator assembly, to the staple firing head. (col. 4, lines 12-35). Figures 1 and 2 show that “the staple firing head assembly is connected to the handle actuator assembly through the cable.” None of the embodiments disclosed in Barker et al. teach a device that utilizes two cables to move the first and second tissue stapling members relative to one another. In addition, Barker et al. neither shows nor suggests a first cable which when drawn proximally, moves a first stapling member in a first direction and a second cable which when draw proximally moves the first stapling member in a direction opposite the first direction. Instead, Barker et al. utilizes a spring to draw the cartridge member relative to the anvil in a direction opposite the direction it is drawn by the cable (col. 7, lines 33-35).

It is therefore respectfully submitted that claim 21 is not anticipated by Barker et al. and that this rejection should be withdrawn. Because claims 22-24 depend from and, therefore, include all of the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

Claims 25-27 stand rejected under 35 U.S.C. § 103 as obvious over Barker et al. in view of McGuckin, Jr. (U.S. Patent No. 5,868,760). The Examiner stated in support of the rejection that Barker et al. shows a full thickness resectioning device as claimed except for a pulley to which the second cable extends around to couple to the anvil. The Examiner further stated that McGuckin Jr. shows a similar device that includes a cable and a pulley.

Claim 28 stands rejected under 35 U.S.C. §103 as obvious over Barker et al. in view of Shichman (U.S. Patent No. 4,488,523). The Examiner stated that Barker et al. shows a full thickness resectioning device as claimed except for a locking member. The Examiner stated that Shichman discloses a locking member on the control handle allowing an operator to lock the first and second tissue stapling members in a desired position relative to one another.

As described above, claim 21 recites a second cable extending “*from the first tissue stapling member to the control handle so that, when the second cable is drawn proximally from the sheath, the first tissue stapling member is moved relative to the second tissue stapling member in a second direction opposite to the first direction.*” For the reasons stated above in regard to claim 21, it is respectfully submitted that Barker et al. does not disclose a second cable to move the first and second stapling members relative to each other as discussed above and clearly neither shows nor suggests a second cable which when drawn proximally, draws the first stapling member in a direction opposite the direction in which the first stapling member is moved when the first cable is drawn proximally.

Neither McGuckin Jr. nor Shichman show or suggest a second cable used to move the first tissue stapling member relative to the second tissue stapling member and hence they fail to

cure the defect of Barker et al. noted above. The Examiner cites these references to cure an unrelated deficiency of Barker et al., namely Barker et al. lacks a pulley to which the second cable extends around to couple to the anvil and a locking member. For these reasons, it is respectfully submitted that none of Barker et al., McGuckin Jr., and Shichman either shows or suggests an apparatus for resecting tissue within a body lumen, comprising a second cable extending *“from the first tissue stapling member to the control handle so that, when the second cable is drawn proximally from the sheath, the first tissue stapling member is moved relative to the second tissue stapling member in a second direction opposite to the first direction”* as recited in claim 1.

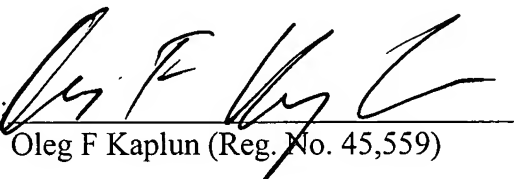
It is therefore respectfully submitted that claim 21 is not rendered obvious by Barker et al., McGuckin Jr., and Shichman, either taken alone or in combination, and that this rejection should be withdrawn. Because claims 25-28 depend from and, therefore, include all of the limitations of claim 21, it is respectfully submitted that for at least the reasons discussed above, these claims are also allowable.

Claims 29-39 stand rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 9-19 of U.S. Patent No. 6,685,079. The Examiner states that the claims are not identical but are not patentably distinct from each other because the claims differ merely in the scope of the subject matter claimed. A Terminal Disclaimer along with a Statement under 37 CFR 3.73(b) are filed herewith to address this rejection. Thus, it is respectfully submitted that the obviousness-type double patenting rejection has been overcome and should be withdrawn.

In light of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. All issues raised by the Examiner have been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: February 1, 2005

By: 
Oleg F Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, New York 10038
Tel: (212) 212-619-6000
Fax: (212) 619-0276 / (212) 208-6819